IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 1797 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE A.L.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SHRI SHAILESHBHAI RATIBHAI PATEL

Versus

STATE OF GUJARAT - Respondent(s)

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Appearance :

MR SP MAJMUDAR for Applicant(s) : 1 - 5.
MR.PATEL, ADDL.PUBLIC PROSECUTOR for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE A.L.DAVE

Date : 06/03/2006

ORAL JUDGMENT

Rule. Mr.S.S.Patel, learned A.P.P. for State waives service of notice of rule. In peculiar facts of the case, this matter is taken up to-day for final hearing.

2. It is indicated that the applicant had applied for

anticipatory Bail and while granting anticipatory Bail, a condition was imposed requiring him to deposit his passport, if any. Accordingly, upon his arrest and released by Police, he had deposited his passport. Subsequently, he applied for regular Bail, which he was granted. While releasing on regular Bail, Court did not impose any condition requiring him to deposit his passport. The applicant therefore, prayed for return of his passport, which was refused. The applicant, therefore, approached this Court with Special Criminal Application No.1619 of 2005 and this Court, passed the following order on 25/11/2005.

"1. Rule. Learned Additional Public Prosecutor, Ms. Panchal, waives service of notice of Rule on behalf of the State.

2. The applicants seek following reliefs :-

"(A) Your Lordships may be pleased to release the passports of the applicants which has been deposited before the trial Court pursuant to order dated 15.6.2004 and further be pleased to delete conditions number D and E imposed upon the applicants vide order dated 3.8.2004 and further be pleased to permit the applicants to leave Gujarat State for the purpose of their business;

(B) During the pendency and final disposal of

the present application, Your Lordships may be pleased to release the passports of the applicants which has been deposited before the trial Court and further be pleased to permit the applicants to visit other States for the purpose of their business;"

3.It is to be noted that the direction to deposit passport was given while admitting the applicants to anticipatory bail. Subsequent to the order, they were arrested and released on bail and, in the order releasing the applicants on regular bail, no condition regarding deposit of passport is imposed. The first order having come to an end upon the applicants' arrest and release on bail, there is no question of passing any order for release of passport. The applicants may straightaway apply for passports to the authority with whom they are deposited.

4.So far as condition regarding not leaving State of Gujarat is concerned, it is indicated that applicant No.1 is summoned for Visa interview on 5th December, 2005, at 8.30 A.M., at Mumbai, by a communication dated 18th November, 2005. Under the circumstances, the condition regarding not leaving State of Gujarat without prior permission of the Sessions Judge concerned is relaxed to the extent that applicant No.1 is permitted to leave State of Gujarat for attending the Visa interview, at Mumbai, between 3rd December, 2005 and 7th December, 2005. Rule is partly made absolute in respect of applicant No.1.

5.So far as other applicants are concerned, no change in

circumstance is indicated for deletion/modification of the conditions and, hence, the prayers in respect of applicants No.2 to 5 stand rejected. Rule is discharged in respect of applicants No.2 to 5.

6.Direct service is permitted."

2.1 Thereafter, the applicant approached learned J.M.F.C. for return of his passport on 29/11/2005 and learned Magistrate directed to return of the passport of applicant No.1 herein for a period from 3/12/2005 to 7/12/2005 and directed that he should redeposit his passport within three days thereafter. Aggrieved by this, the applicant has approached this Court with this petition under Article 227 of the Constitution of India.

3. Heard learned Advocate, Mr.Purohit, for the petitioner and learned A.P.P., Mr.Patel, for the State.

4. It is clear that the condition regarding deposit of passport was imposed only when anticipatory Bail was granted. That order came to an end, the moment applicant is arrested and released on Bail. It is also clear that while releasing the applicant on regular Bail subsequent to his release by Police pursuant to

the order in anticipatory Bail application, no condition regarding deposit of passport is imposed. The order regarding anticipatory Bail comes to an end, the moment it is implemented and the applicants' case is considered on merits on question of regular Bail. The condition imposed while granting anticipatory Bail, would therefore, become inoperative. This would entitle the petitioner to claim for return of his passport and learned Magistrate was in error in insisting for redeposit of passport in absence of any such condition.

5. The petition, therefore, deserves to be allowed and is accordingly allowed. The order passed by the learned Judicial Magistrate, First Class, Umreth dated 29/11/2005 is hereby quashed and set aside. The applicant shall be returned his passport. It is clarified that other conditions imposed while releasing the applicant on regular Bail, would continue to operate. Rule is made absolute. Direct Service is permitted.

(A.L.DAVE, J.)

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